

# Water as a Commons

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Natural Resources Stream

Water Group

# The Problem that water commons face worldwide

- \* Neoliberal policy is leading to the enclosure of water commons and subjecting them to the logic of the market where the value of water is measured solely by its price on the global water market. This is creating conflicts or “water wars” of local people against the state and multinationals.

# The Solution: Commoning Water

- \* Water is not a resource but both a sacred and biological source of life.
- \* When the quality of water is degraded the quality of human life and the environment are degraded so it must be managed sustainably.
- \* Water is not just a thing to consume but reflects a series of social relationships and is a site of power and a source of community development, autonomy and empowerment therefore power in decision making should be diffused, inclusive and transparent and channels for commoning should be created

# What is “Commoning”?

- \* *Commoning*: “is the evolution of commoners’ ability to impose shared rules on themselves: an evolution of the so-called “vernacular laws” which do not descend from above - from the State or from the transnational law firms - but an origin that originates from below: expressing needs, interests and values that circulate within local communities at the grassroots level.”  
Tommaso Fattori in *Commoning Public Utilities*  
(Member of the Italian water Forum)

# The Approach to Commoning Water

- \* Commonifying water requires an understanding of water commons in three different dimensions: the legal form or governance, the non economic values of the commons , and finally the political and social context in which commons are embedded.
- \* Understanding each of these dimensions can provide us with tools and strategies for protecting water commons.

# The Legal Form & Governance of the Commons

- \* By identifying the form in which water commons are owned (public, private to common ownership) and how these forms of ownerships are named in each legal system, we can identify different “templates” for constructing and protecting water commons as well as forms which are destructive of water commons.
- \* By identifying the legal form, this may also assist us to evaluate the operational rules of a given legal form against our “commons water design principles.”
- \* Water governance may require *nested* and/or *polycentric* governance which is the coordination of many different level of water governance regimes (local, national and international) as well as the recognition of *customary* governance regimes.

# Water Commons Design Principles

- \* No right to transfer water individually. The transfer of water rights must be accomplished collectively with full transparency to the user and manager community.
- \* Diffused horizontal decision making which allows for the widest amount of citizen's participation not only at the level of monitoring but at the level of decision making.
- \* Inclusion of “need” and “care” holders as opposed to “stakeholders” in the process of decision making. So those who use and manage water should only be involved in decision making as opposed to those with an economic interest in water.
- \* Allocation of water to a certain minimum level should not be dependent upon price.
- \* The price of water should only reflect costs and not profit.

# Examples of Legal Structure of Water Management

- \* Typical Model is the PPP (Public/Private Management of Water).
- \* Paris: Public Management with Participatory Features
- \* Naples: Public Management with Enhanced Participatory Features
- \* Bolivian Constitution & Regional Water Parliaments
- \* Public Trust Doctrine
- \* Principle of Subsidiarity



# PPP Management of Water

- \* a [management contract](#), under which the private operator is only responsible for running the system, in exchange for a fee that is to some extent performance-related. Investment is financed and carried out by the public sector. The duration is typically 4–7 years.
- \* a [lease contract](#), under which assets are leased to the private operator who receives a share of revenues. He thus typically bears a higher commercial risk than under a management contract. Investment is fully or mostly financed and carried out by the public sector. The duration is typically 10–15 years.
- \* a mixed-ownership company in which a private investor takes a minority share in a water company with full management responsibility vested in the private partner.
- \* a [concession](#), under which the private operator is responsible for running the entire system. Investment is mostly or fully financed and carried out by the private operator. The duration is typically 20–30 years.

# Eau de Paris

- \* The company is an semi-independent legal entity that has its own budget and reports to the municipality. Its publicly owned and city run. Profits, rather than going to private companies is reinvested into the water service.
- \* The Board of Directors is composed of elected representatives of the Paris municipality (10 members), who represent all the political groups of Paris, elected Local Authority members, staff representatives (2 members), and qualified individuals who represent other interests, 2 water and sanitation experts, 1 environmental NGO, 1 consumer organization and 1 member of the observatoire (5 members).

# Paris cont. User participation: The Observatoire

- \* A citizen's control mechanism has been introduced via the Municipal water watch (Observatoire Municipal de L'Eau).
- \* This group enables users to evaluate the provision of services. It also provides a space for discussion between all stakeholders and for putting forward ideas at the municipal level. This body also has a representative on a consultative basis on the Board.
- \* Meetings of the Observatoire are open for the public

# Benefits of “Commoning” Processes in the Paris Model

- \* Higher profits: no need to pay dividends to shareholders and to set aside part of the profits generated by the water services to pay them. In fact Eau de Paris saved 35 million per year.
- \* Transparency of contracts.
- \* Cost of water is remaining stable at a cost below the national average. And an 8% decrease in price of water tariffs within the first 2 years.
- \* And these extra savings have permitted a policy of social subsidies:
  - \* to guarantee access to water in Paris for poor families.
  - \* to assist local farmers to switch local agriculture to organic to reduce water pollution.

# Birth of ABC Napoli

- \* The Conversion into ABC Napoli took place September 23, 2011.
- \* Legal Form: Conversion from SPA(private corporation) to an azienda speciale (public entity).
- \* Board of Directors: Current composition-5 members (all with voting power) appointed by the mayor
  - \* President
  - \* Administratore Delegato (CEO Executive function)
  - \* 1 members of the technical, administrative, guridical expertise
  - \* 2 member of the “environmental world”

# Comitato di Sorveglianza

- \* Participation of the board by users (citizens) and workers through the “Comitato di sorveglianza”.
  - \* 21 Person Board
    - \* 6 representatives of the City of Naples (1 a delegate of the mayor on the commons (assessore))
    - \* 5 representatives of the workers
    - \* 5 Environmental Experts
    - \* 5 representatives of the users.
    - \* Citizens are entitled to access information on the deliberations and they are made public online.

# Proposals Currently Under Consideration

- \* The role of the 2 Environmental Experts:
- \* Should a representative of the comitato be in the consiglio as a member with voting power.
- \* How to value water by something other than price.
  - \* Introduction of the Common Good Matrix developed by Christian Felber.

# Public Trust Doctrine: Great Lakes





# Bolivian Constitutional Model

# The Values of the Commons

- \* By identifying alternative values of the commons other than that of economic value, we can create a criteria by which we can measure the success of water management by something other than its profitability.
- \* Those values are similar to those expressed in our earlier statement about water as a commons except in this instance we would translate them into characteristics which are assigned certain point values much like the matrix of the common good. developed by Christian Felber.

# Matrix of the Water Commons

- \* Democratic Participation
- \* Transparency of Procedures
- \* Eco-Sustainability
- \* Access
- \* Reinvestment of surplus to improve sustainability, access, and quality.

# Political Context & Strategies

- \* The protection of water commons has its own unique political and social contexts and the political strategies may differ from place to place however a few generalizable political strategies may include the following:
  - \* The transformation of private management systems to publicly or commons management through:
    - \* People's Referendums
    - \* Creation of Instruments of Direct Democracy such as the inclusion of users and managers in decision making (ie monitoring bodies as in the Naples and Paris examples
    - \* Court Decisions which recognize the necessity of such transformations
    - \* Political force initiated either through People's referendums or at municipal, regional or national levels by governments or through charters and/or the constitution.
      - \* There are also transnational referendum processes like the European Citizen's Initiative on Water as a Human Right.
  - \* Support of International Treaties and initiatives that recognize the right to water like the United Nations General Assembly resolution or United Nations water day.